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IN THE

# Supreme Court of the United States

October Term, 1967

NO. 429

TRAVELERS INDEMNITY COMPANY, *Petitioner,*

v.

GREYHOUND LINES, INC., ET AL, *Respondents.*

## REPLY TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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*To The Honorable United States Supreme Court:*

These Respondents, being some of the passengers who were injured as a result of the accident in question, respectfully pray that this Honorable Court deny the application. The recent decision of this Court in *State Farm Fire & Casualty Co. et al v. Kathryn Tashire*, 386 U.S. 523, is dispositive of all material questions presented by Petitioner.

## DENIAL THAT THE "QUESTION PRESENTED" WAS URGED BELOW

Petitioner states the "Question Presented" is,

> "Whether or not it is a *denial of due process* for a court to permit only a piecemeal use of the Federal Interpleader Act in cases involving multiple unliquidated tort claims arising out of the same accident." (See page 2 of the Petition. Emphasis added.)

This was not presented below, nor was it urged in a motion for rehearing before the United States Court of Appeals for the Fifth Circuit. Thus, it may not be properly here considered. *New York Dock Co. v. The Poznan*, 274 U.S. 117, 71 L.Ed. 955, 47 S.Ct. 482, 485 (1927).

Moreover, the alleged "denial of due process" solely involves a non-appealing party; namely, All Woods, Ltd., Petitioner's assured. The contention is that the judgment of the trial Court potentially strips All Woods of its insurance protection in that one of the successful judgment creditors could seek full relief from the assured without regard to the "fund" deposited in the interpleader action. This, according to Petitioner, might potentialize bankruptcy of the assured, All Woods. There is certainly no indication in this record that such eventuality might occur. Further, as stated above, All Woods is not complaining of such a possibility before this Honorable Court, nor did it before the Court of Appeals.

Nor did Petitioner urge this potentiality in its original prayer before the District Court or in the Court of Appeals by way of an assignment or point of error.

Finally, the issue was resolved by this Court in *Tashire* in the following language:

> "The fact that State Farm has properly invoked the Interpleader jurisdiction under § 1335 did not, however, entitle it to an order both enjoining prosecution of suits against it outside the confines of the Interpleader proceeding *and also extending such protection to its assured, the alleged tort-feasor.* * * *"

If there is any "inequity" involved in the subjection of the assured to potential bankruptcy, it is a possibility voluntarily brought about by the action of Petitioner in invoking the Federal Interpleader Act. Not only would the potentiality contemplated by Petitioner not have arisen had the interpleader not been filed, but the further and greater possibility that a judgment in concourse would surely bankrupt *any* business entity could directly result if the contention of Travelers that all claims should be litigated in a concourse is correct.

Greyhound Lines, Inc., an obviously willing "Defendant" in this attempt at *concursus* (just as in *Tashire*), has continually alleged that it was not liable, but, to the contrary, the real wrongdoer and tortfeasor was All Woods and its driver. It cannot be doubted that if Greyhound is right and a final judgment is entered in a single action against All Woods in a concourse proceeding such a judgment would greatly exceed the insurance coverage. On the other hand, had the interpleader not been invoked the practicalities are that the injured persons or parties would pay little or no attention to potential assets of All Woods in proceedings involving multiple *fori*, or at the very least the potential divergent results that could be reached would have the effect of protecting the solvency of the assured. Petitioner, and no other party, has brought its assured to the edge of this precipice.

## RESPONSE TO THE "REASONS FOR GRANTING THE WRIT"

While counsel for Petitioner does not openly admit it to be the case, each "reason" asserted for granting the writ is answered adversely to its contention in the *Tashire* case.

It first argues that it has been denied the "full relief" guaranteed by the Federal Interpleader Act "simply because the fund is small in comparison to the total amount of the claims presently pending." No such holding appears in the judgment below, or perforce the decision in *Tashire*. What the Court has said is that the insurance carrier may invoke the provisions of the Interpleader Act to the extent that it is necessary to protect its "fund", but that it simply cannot serve as a "bill of peace." The countervailing rights and remedies of other parties, such as the right to choose the forum and assert their remedies without being thrown into a hodge-podge litigation, are paramount absent clear Congressional intent to the contrary. As the Court put it in *Tashire:*

> "* * * Had it been so intended, careful provision would necessarily have been made to insure that a party with little or no interest in the outcome of a complex controversy should not strip clearly interested parties of substantial rights—such as the right to choose the forum in which to establish their claims, subject to generally applicable rules of jurisdiction, venue, service of process, removal and change of venue. None of the legislative and academic sponsors of a modern Federal Interpleader device view their accomplishment as a 'bill of peace' capable of sweeping dozens of law suits out of the various state and federal courts in which they were brought and into a single interpleader proceeding. * * *"

The second "reason" urged is that All Woods could be subjected to judgment collection efforts without the benefit of the insurance protection it provided for itself. As previously noted, Petitioner was not required to take the course of action it took, nor, for that matter, to continue to pursue it in the District Court. Also, All Woods is not complaining, and if there is a danger of "bankruptcy" it does not lie in the course of action taken by the Court below, but rather in the very matter of instituting the interpleader in the first place. In any event, this Court made it quite clear in *Tashire* that the fortuitous circumstance that a wrongdoer had seen fit to provide insurance in an amount less than would protect the parties he injured does not authorize the insurance carrier to speak on his behalf. The Federal Interpleader Act was simply not intended to "extend(ing) such protection to (the) insured, the alleged tort-feasor."

The third "reason" involves a reargument of the value of the Interpleader Act as applied to a bill in the nature of interpleader when invoked by an indemnity insurance carrier. All of these arguments were directly dealt with in the *Tashire* case, and will not be reexplored. The fact of the matter is that the Congress obviously did not intend to extend this protection to a public liability insurance carrier in such a manner as to permit it to require a concourse of claims among all parties to the incident, at least where the invocation of the remedy involves a determination of issues not directly related to the deposited "fund".

Petitioner alleges that it has been denied a "trial by a jury" by reason of the holding of the trial Court. Apart from the circumstance that it is not altogether clear that

"claimants" are entitled to a jury trial in an interpleader action, 2 Barron & Holtzoff, Federal Practice & Procedure §556, pp. 247-250, Petitioner has not been denied a right of trial by a jury in any proceeding involving the basic issues of liability *vel non* or the damages sustained by the various litigants. It is true that a jury is only advisory in the State Courts in Louisiana, but certainly the Interpleader Act was not intended to overlay the entire tort jurisprudence of that state, and Petitioner has not been denied such a "right" in Texas where the right is guaranteed in the State Constitution.

Finally, Petitioner "reasons" that the judgment below denies to it the right to litigate its non-liability in the Federal forum. It claims this "right" independent of its right and duty to litigate the liability of its assured on behalf of the assured, and it further argues this "right" must be protected even though it swallows up the independent rights of the other parties to choose their forum or to litigate in the usual manner involved in tort claims. As the Court observed in the *Tashire* case:

> "* * * None of the legislative and academic sponsors of a modern federal interpleader device view their accomplishment as an "bill of peace" capable of sweeping dozens of law suits out of the various state and federal courts in which they were brought and into a single interpleader proceeding. * * *"

Petitioner does have the right, as well as the duty, to defend itself and its assured in the various state courts and may there properly determine its liability or non-liability for the occurrence. It has been denied nothing guaranteed it by the Federal Interpleader Act, or intended for its benefit by the Congress.

WHEREFORE, these Respondents respectfully pray this Honorable Court deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

By _____
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## CERTIFICATE

This will certify that a true and correct copy of the above and foregoing brief has been furnished to counsel for Petitioner.

_____
W. JAMES KRONZER